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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 **LARRY DEAN PADILLA,**

15 Plaintiff,

16 v.

17 **M. S. EVANS,**

18 Defendants.  
19

CASE NO. C 06-1725 MJJ

**DECLARATION OF S.  
FEUDALE IN SUPPORT OF  
DEFENDANT'S MOTION TO  
DISMISS**

20 I, Scott J. Feudale, declare:

21 1. I am a Deputy Attorney General in the California Attorney General's Office, counsel of  
22 record for Defendant M.S. Evans in this matter. I am competent to testify to the matters set forth  
23 in this Declaration, and if called upon to do so, would so testify. I submit this declaration in  
24 support of Defendant's Motion to Dismiss.

25 2. Attached as Exhibit A is a true and correct copy of a declaration from the custodian of  
26 records at Salinas Valley State Prison, dated September 28, 2006. This declaration applies to and  
27 authenticates Exhibit B, from Plaintiff's central file.

28 3. Attached as Exhibit B is a true and correct copy of Inmate Padilla's (CDCR # P-05966)

1 inmate appeal no. 05-00876, and related documents.

2  
3 I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th  
4 day May, 2007, at San Francisco, California.

5  
6 /s/ Scott J. Feudale

7  
8  
9 

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Scott J. Feudale  
Deputy Attorney General



**EXHIBIT A**



DECLARATION OF CUSTODIAN OF RECORDS

I, Araceli Esparza declare as follows:

I am employed by the California Department of Corrections at Salinas Valley State Prison, Soledad, California as a Staff Service Analyst. In this capacity, I am a duly authorized custodian of records maintained on inmates committed to the custody of the California Department of Corrections and housed at this institution.

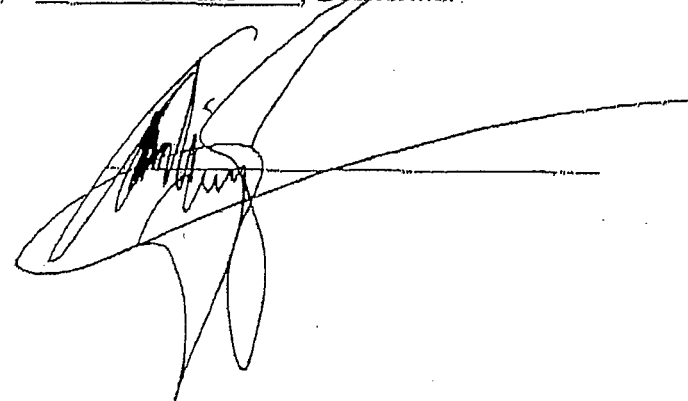
A central file is maintained on each inmate housed in the California Department of Corrections. The file is maintained by the records office of each institution housing the inmate, and transferred with the inmate to any other institution.

The documents and entries in documents pertaining to an inmate are prepared at or near the time of their occurrence by persons with knowledge of the circumstances or events.

The documents attached hereto are true and correct copies of documents from the file of inmate Padilla CDC # P05966 and maintained in the regular course of business by the Department of Corrections at this institution.

I declare under penalty of perjury that I am competent to testify as a witness, that the foregoing is true and correct and based on my personal knowledge except for those statements based on information and belief, and as to those statements I believe them to be true, and that if called as a witness, I would so testify.

Executed on September 28, 2006, at Soledad, California.



**EXHIBIT B**

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE APPEAL FORM  
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. S.V.S.P. A1. 05-008762. CAI

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Padilla, Larry	P-05966	N/A	A3-202

A. Describe Problem: Since the beginning of Jan.1st,2005 I have been denied exercise(Yard) on the following days;1,2,4,6,8,9,10,11,12,13,14,16,18,19th schedule changed?,20,21,22,23,24,25,26th. Exercise is a basic human need. A long-term denial of any opportunity for exercise out side an inmates cell violates the Constitution. According to the Title 15 §3343.(h) Exercise. Segregated inmates have at least Three days per week of exercise and not less than 10 hours a week. I have received a total of LESS THAN 1hr. per day. Although this is a SNYard I have received less exercise time than Segregated inmates. As of this writing my self and the top tier have had 9hrs. and 25mins. of exercise yard in 26 days. This is in-

If you need more space, attach one additional sheet.

(CONTINUED ON FOLLWING PAGE)

B. Action Requested: That the exercise (yard) on this SNYard here at S.V.S.P be re-evaluate, to where this inmate and others get exercise yard every day. "Note" case law; Hoptowit V. Ray (9th Cir. 1982)682 F.2d 1237,1259; Wilson V. Seiter,501 U.S. 294,304,111 S.Ct.2321,2327(1992) Fausset, Lancaster State Prison Backs Off Lockdowns, Los Angeles.

Inmate/Parolee Signature: Larry PadillaDate Submitted: 1/27/05C. INFORMAL LEVEL (Date Received: REC'D FEB 3 2005)Staff Response: (Denied) see Attached copy memo

DELIVERED FEB 02 2005

THIS WAS STAMPED BUT NOT ANSWERED. 4/12/05

REC'D FEB 17 2005

Staff Signature: [Signature]

DELIVERED FEB 18 2005

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

After reading the response of the investigating officer, It is obvious that the investigation was not done properly. I have kept a log on the days and times this inmate and other inmates on this top tier (see exh. "A"). It is my belief that the times and days specified have been forged by staff, nor have I been released at the proper times nor been given Dayroom or Yard

-(Continued on following page)-

Signature: Larry PadillaDate Submitted: 2/18/05

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

REC'D FEB 22 2005

CDC Appeal Number:

First Level ☐ Granted ☒ P. Granted ☐ Denied ☐ OtherE. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 2/23/05Due Date: 4/6/05Interviewed by: W. P. BINKLE

You will be afforded exercise yard pursuant to OP 11 AND your Prisoners Earning Status. You are A 2B AND Receive yard Monday through Friday according to odd & even building rotation. You will not receive yard on days the facility is faced with staffing shortages as it create a safety issue for both staff & Inmate.

Staff Signature: [Signature]Title: ISDate Completed: 13-30-05Division Head Approved: [Signature]Title: CA/IC

Returned

Signature: [Signature]Title: CA/IC

Date to Inmate:

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

On March 30th, 2005 I spoke to Lt. Binkle, I understand the

DELIVERED APR 12 2005

predicament of staff shortages... But per Calif. Law a shortage of staff and/or staff being taken from this Sensitive Needs yard does not justify the denial of outside exercise for this Sensitive Needs yard, Yes there have been isolated incidents-

(Continued on "F")

Signature: [Signature]Date Submitted: 4-13-05Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ OtherG. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 4/12/05Due Date: 5/12/05☒ See Attached Letter

DELIVERED MAY 19 2005

Signature: [Signature]Date Completed: 5-12-05Warden/Superintendent Signature: [Signature]

Date Returned to Inmate:

H. If dissatisfied, add date or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

For the Director's Review, submit all documents to: Director of Corrections  
P.O. Box 942883  
Sacramento, CA 94283-0001  
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☐ Denied ☐ Other☐ See Attached Letter

Date: \_\_\_\_\_

(CONTINUED FROM 602)

violation of the United States Constitution. I'm being treated as an AD-SEG inmate but getting less exercise than an AD-SEG inmate. No memo's have been given out.

Respectfully Submitted,

1/27/05 Larry Padilla P-05966  
A3-202



(Continued from D. Formal Level)

until 11:30am or 3:30pm. I can get 100+ signatures alone to prove the facts stated in this 602.

There is a blatant disregard for this inmates rights on this SNYard, which I believe is due to the classification of some inmates here.

And according to the Ninth Circuit this prison is in violation of my constitutional rights and basic human need for exercise, and is deliberate indifference to unusual prison conditions.

2/18/05

Larry Padilla P-05966

(Continued from "F" on 60.)

but they still don't warrant the dramatic denial of outside exercise and/or any type of program due to staff being rerouted to another yard or lack of staff.

(E.O.P.) Enhanced out Patient program prisoners are allowed program every day, Ad-Seg prisoners are allowed more program then this Sensitive Needs yard.

Again, my self and others on the top tier's are being denied outside exercise which is a basic human need and violates the 8th Amendment of the U.S. Constitution.

Being a lifer, jobs also cause a problem which also denies partial program for prisoners due to their classification even if they have stayed out of trouble and rules violation free.

Inmate Work and Training Incentive Group §3044.(c)(5), This rule can be broadly interpreted, and denies this prisoner privileges other prisoners are getting.

If a prisoner stays out of trouble they should be given the opportunity of outside exercise (yard) every day... Especially when NO jobs are available on this Sensitive Needs Yard and/or other yards with Sensitive Needs Programing.

A policy change is warranted for prisoners that want to work but can't due to the lack of jobs, due to this prisoners are being denied outside exercise every day.

Respectfully Submitted,

Dated: April 13th, 2005

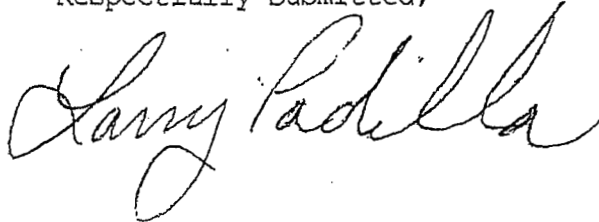
A handwritten signature in cursive script, appearing to read "Larry Padilla". The signature is written in dark ink and is positioned to the right of the typed name "Larry Padilla".

Exhibit A



## January

1. No Pro.
2. No Pro.
3. Y-2hrs.20mins.DR-1hrs.20mins.
4. No Pro.
5. Y-1hrs.35mins.
6. DR-50mins.
7. Y-2hrs.
8. DR-1hr.30mins.
9. No Pro.
10. DR-40mins.
11. No Pro.
12. No Pro.
13. No Pro.
14. DR-1hr.42mins.
15. Y-2hrs.DR-1hr.40mins.
16. No Pro.
17. DR-1hr.2mins.Y-1hr.30mins.
18. No Pro.
19. Schedule Changed? No Pro.
20. DR-1hr.48mins.
21. DR-1hr.40mins.
22. DR1hr.30mins.
23. No Pro.
24. DR-55mins.
25. No Pro.
26. DR-1hr.45mins.
27. Y-1hr.37mins.DR-1hr.55mins.
28. DR-1hr.15mins.
29. No Pro.
30. DR-1hr.45mins.
31. DR-1hr.30mins.

Total Yard Time; 9hrs. 25mins.  
 Total Dayroom Time; 16hrs. 22mins.  
 For the month of Jan. 2005  
 Total Days 31

## February

1. DR- 49 mins.
2. No Pro.
- 3.DR-1hrs.55mins.
- 4.DR-1hrs.45mins.
- 5.DR-1hr.Y-1hr.50mins.
- 6.No Pro.
- 7.Y-2hrs.5mins.DR-1hr.40mins.
- 8.No Pro.
- 9.Y-1hr.40mins.
- 10.DR-1hr.25mins.
- 11.DR-1hr.50mins.
- 12.Dr-1hr.40mins.
- 13.No Pro.
- 14.No Pro.
- 15.No Pro.
- 16.No Pro.
- 17.No Pro.
- 18.No Pro.

Total Yard Time; 5hrs. 40mins.  
 Total Dayroom Time; 11hrs. 14mins.  
 For the month of Feb. 2005  
 Total Days 18

Up to date stats for February 2005;

19. No Pro
  20. No Pro
  21. No Pro
  22. No Pro
  23. Y-2hrs.1min. DR-1hr.45mins.
  24. No Pro
  25. No Pro
  26. DR-1hr.57mins.
  27. No Pro
  28. No Pro
- Total yard time; 7hrs. 36mins.  
 Total Dayroom time; 15hrs. 6mins.

The following two months March and April 2005, The time for outside exercise and dayroom time are as fallows:

(Continued from page 1)

## March 2005

1. No Pro
2. DR-1hr.40mins.
3. Y-2hrs.26mins. Dr-1hr.57mins.
4. DR-1hr.54mins.
5. DR-2hrs.
6. No Pro
7. Y-1hr.44mins. DR-36mins.
8. No Pro
9. No Pro
10. DR-1hr.55mins.
11. Y-2hrs.20mins.
12. DR-1hr.45mins.
13. No Pro
14. DR-1hr.40mins.
15. No Pro
16. DR-1hr.17mins.
17. DR-1hr.30mins.
18. No Pro
19. No Pro
20. No Pro
21. No Pro
22. DR-1hr.42mins.
23. DR-2hrs. Y-2hrs.20mins.
24. No Pro
25. Y-1hr.52mins.
26. No Pro
27. Y-2hrs.25mins.
28. No Pro
29. DR-1hr.42mins.
30. DR-1hr.28mins.
31. Y-2hrs.22mins. DR-1hr.37mins.

## April 2005

1. Y-2hrs.35mins. DR-1hr.38mins.
2. DR-1hr.36mins.
3. Y-2hrs.1min.
4. DR-1hr.50mins.
5. Y-2hrs.18mins DR-1hr.45mins.
6. DR-1hr.51mins.
7. DR-1hr.34mins. Y-2hrs.7mins.
8. DR-1hr.28mins.
9. DR-1hrs.44mins.
10. No Pro
11. DR-2hrs.5mins. Y-2hrs.14mins.
12. No Pro
13. Y-1hr.45mins.DR-0

Total Outside exercise for the month of March 2005; 15hrs.29mins.  
 Total Dayroom time for the month of March 2005; 24hrs.43mins.

Total Outside exercise from April 1-13,2005; 13hrs.  
 Total Dayroom time from April 1-13,2005; 15hrs.31mins.

No program for the month of January 2005 was; 12 days

No program for the month of February 2005 was; 17 days

No program for the month of March 2005 was; 13 days

No program for the month of April 2005 was; 2 days as of the 13th of April 2005.

Department of Corrections

Salinas Valley State Prison

**M E M O R A N D U M**



Date: February 13, 2005

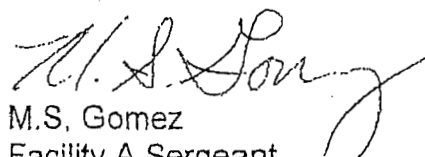
To: Appeals Coordinator  
Salinas Valley State Prison

Subject: **Appeal/ Yard time**

On February 13, 2005 I received an appeal from the appellant stating he has received a total of 9.25 hours of yard during January 1, 2005 thru January 26, 2005 thus denying his constitutional rights and basic human need for exercise.

During the course of the investigation into this appeal a subsequent review of Alpha 3 control log book revealed the appellant has had numerous occasions to leave his cell and either go to the yard or attend the day room. The following is a sub sequential list of days and activities the appellant was afforded. On 1/3/05 yard from 09:00-11:30, 1/5/05 yard from 09:00-11:30, 1/06/05 dayroom from 09:00-11:30, 1/08/05 dayroom from 09:00-11:30, 1/09/05 dayroom from 09:00-11:30, 1/10/05 dayroom from 09:00-11:30, 1/13/05 yard from 09:00-11:30, 1/14/05 dayroom from 09:00-11:30, 1/15/05 yard from 09:00-11:30, 1/17/05 yard from 09:00-11:30, and dayroom, 1/19/05 dayroom from 09:00-11:30, 1/20,21,22,24 and the 25<sup>th</sup> there was yard and dayroom activities. By my calculations the appellant has been given the opportunity to exercise for over forty hours throughout the time period the appellant specified.

The appellant's appeal is not accurate and is DENIED.

  
M.S. Gomez  
Facility A Sergeant  
Salinas Valley State Prison



State of California

Department of Corrections

**Memorandum****C-FILE**

Date: April 22, 2005

To: Inmate Padilla, P-05966  
Salinas Valley State Prison

Subject: SECOND LEVEL APPEAL RESPONSE LOG NUMBER-SVSP-A-05-00876.

**ISSUE:**

Appellant believes that he was denied access to the Facility A Exercise Yard during the month of January 2005 as he contends that he received a total of less than one (1) hour per day of yard access.

Appellant requests on appeal that Facility A, Sensitive Needs Yard Program be re-evaluated as to allow him access to the yard every day.

**INTERVIEWED BY:** R. Binkele, Correctional Lieutenant**REGULATIONS:** The rules governing this issue are:

Operational Procedure 11

II. A2/B

A. Yard / Dayroom

**SUMMARY OF INVESTIGATION:**

The First Level of Review (FLR) was completed on 03-30-2005. T. Krenke, Correctional Lieutenant was assigned to investigate this appeal at the Second Level of Review. All submitted documentation and supporting arguments have been considered. Additionally, a thorough examination has been conducted regarding the claim presented, and evaluated in accordance with Salinas Valley State Prison (SVSP) Operational Procedures (OP); the California Code of Regulations (CCR); and the Departmental Operations Manual (DOM). The assigned Lieutenant reviewed this appeal, the FLR, and the issues contained therein.

The appellant contends that he received less than one (1) hour of yard per day during the month of January 2005. There is clear documentation by M. Gomez, Facility A Yard Sergeant, which details the dates and times the appellant was granted access to either yard or dayroom at the Informal Level of Review. The appellant was not satisfied with the recorded documentation and states; "after reading the response of the investigating officer, it is obvious that the investigation was not done properly." The appellant submits his beliefs to this statement. The appellant also includes a log on the days and times of yard and dayroom access. In reviewing this "log", it is found that it is in conflict with the appellant's statements. The appellant claims that he was receiving less than

PADILLA, P-05966  
CASE NO. SVSP-A-05-00876  
Page 2 of 2


one (1) hour per day but his log does not correspond. In reviewing these documents in their entirety, it is found that the appellant had received over forty (40) hours of access during this time frame.

At the present time, SVSP is under a State of Emergency based on the staff shortages. A rotational plan has been implemented to ensure that each of the five (5) facilities here at SVSP is afforded equal access to a full program. However, should a facility not have enough staff members present to provide appropriate security, that specific facility shall be placed on a Modified Program. As the safety and security of inmates, staff and this institution shall take precedence at all times.

The appellant has failed to provide any evidence to support his claims other than his beliefs. Additionally, the investigation has not produced any type of evidence which would support the appellant is being denied access to program. The appellant has been afforded appropriate access to programs, yard and dayroom. This access will continue as institutional needs permit.

**DECISION:** The appeal is Denied.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.

  
L.E. SCRIBNER  
Chief Deputy Warden  
Salinas Valley State Prison

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
INMATE APPEALS BRANCH  
P. O. BOX 942883  
SACRAMENTO, CA 94283-0001

**DIRECTOR'S LEVEL APPEAL DECISION**

Date: **AUG 10 2005**

In re: Padilla, P-05966  
Salinas Valley State Prison  
P.O. Box 1020  
Soledad, CA 93960-1020

IAB Case No.: 0411603

Local Log No.: SVSP 04-00876

This matter was reviewed on behalf of the Director of the California Department of Corrections (CDC) by Appeals Examiner S. Ortiz, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

**I APPELLANT'S ARGUMENT:** It is the appellant's position he was denied access to the Facility "A" exercise yard during the month of January 2005. The appellant contends that he received a total of less than one hour per day of yard access. The appellant requests that the Facility "A" Sensitive Needs Yard program be reevaluated to allow the appellant access to the yard every day.

**II SECOND LEVEL'S DECISION:** The reviewer found that the Salinas Valley State Prison (SVSP) staff interviewed the appellant. The appellant was informed that in review of the Facility activity log it was determined that his contention that he was only afforded one hour access to the yard does not correspond with the log. The activity log clearly states that the appellant received over 40 hours of access during the January 2005, time frame provided by the appellant. The reviewer learned that at present the SVSP is under a State of Emergency based on the staff shortages. A rotation plan has been implemented to ensure that each of the five facilities at SVSP is afforded equal access to a full program. However, should a facility not have enough staff members present to provide appropriate security, the specific facility shall be placed on a modified program. In this case, the safety and security of inmates, staff and the institution takes precedence at all times. The appeal was denied at the Second Level of Review.

**III DIRECTOR'S LEVEL DECISION:** Appeal is denied.

**A. FINDINGS:** The documentation and arguments presented are persuasive that the appellant has failed to support his appeal issue with sufficient evidence or facts to warrant a modification of the Second Level response. In this instance safety and security remain the highest priorities and take precedence over all other programs. Furthermore, a review of the activity logs provides evidence that the appellant was afforded over 40 hours of yard for the identified period. Additionally, exercise time will be provided once the modified program is returned to normal program. No relief will be afforded the appellant at the Director's Level of Appeal.

**B. BASIS FOR THE DECISION:**

California Code of Regulations, Title 15, Section: 3001, 3084.1, 3270, 3380, 3383

**C. ORDER:** No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDC.



N. GRANNIS, Chief  
Inmate Appeals Branch

cc: Warden, SVSP  
Appeals Coordinator, SVSP